

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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O.A. No. 66/93
X/PA/No.

199

DATE OF DECISION 21.6.93

GHISU LAL

Petitioner

SHRI RINESH GUPTA

Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ANR.

Respondent

SHRI U.D. SHARMA

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

The Hon'ble Mr. O.P. SHARMA, ADMINISTRATIVE MEMBER.

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether it needs to be circulated to other Benches of the Tribunal ?

(O.P. SHARMA)
MEMBER (A)

(D.L. MEHTA)
VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR:

Date of Decision: June 21, 1993.

OA 66/93

GHISU LAL

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON. MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

HON. MR. O.P. SHARMA, ADMINISTRATIVE MEMBER.

For the Applicant ... SHRI RINESH GUPTA.

For the Respondents ... SHRI U.D. SHARMA.

PER HON. MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

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The brief facts of the case are that on 2.9.80, an accident took place by a vehicle driven by the applicant resulting in the death of one Shri Inder Chand Mehta. A claim was filed before the Accident Claims Tribunal, Jaipur, and the award was passed on 27.12.83, directing the respondents including the present applicant to pay the compensation to the legal representatives of the deceased as per award. An appeal was preferred before the Hon'ble High Court and the same has been disposed of vide judgement dated 4.11.86. An appeal was preferred by the legal representatives of the deceased for the enhancement of the compensation and by the respondents No.1 and 3 for setting aside the award. Appeal filed by the respondents i.e. Union of India and its officers was rejected, and the appeal preferred by the claimant was accepted in part. The amount of compensation was raised and directions were given for the payment of compensation of Rs. One lakh fourty three thousands in spite of Rs. Seventy two thousands, already awarded by the Tribunal. Further directions were given for the payment of interest.

2. The applicant Ghisu Lal, Driver, was also bound by the award and he was a party before the Claims Tribunal as well as before the High Court. The Hon'ble High Court gave a finding that it was a case of rash and negligence driving by Ghisu Lal resulting in the death of Shri Inder Chand Mehta.

3. The learned counsel for the applicant submits that the respondents No.1 and 2 are recovering a part of the amount from the applicant, out of the total amount awarded as compensation.

4. It will not be out of place to mention here that in the cases of accidents, liability of the employer is based on the doctrine of vicarious liability. The principal liability is of the person who drives the vehicle rashly and negligently resulting in accident and death or injury to the stranger. *Liability is several as ~~joint~~ well as joint*

5. Mr. Gupta, appearing on behalf of the applicant, has cited before us the case of Umesh A. Nair Vs. Telecom Distt. Engineer, Kulwar, (1990 (3) SLJ CAT 539). In para 7 of the judgement, the Tribunal has taken the view that the Accident Claims Tribunal is not a civil court. It has also observed that driving of the vehicle rashly and negligently is an incidental matter in the cases of claim submitted before the Accident Claims Tribunal.

6. The ~~court~~ ^{Tribunal} adjudicates the civil rights between the parties and after the decision of the civil rights the judgement or the decree or order finally settles the disputes between the parties.

7. The Accident Claims Tribunal was constituted u/s 110 of the Motor Vehicles Act, for adjudicating the civil rights of the persons and the legal representatives of the deceased

in the matter of compensation. Apart from the civil rights of the legal representatives, the injured person also gets the adjudication of the civil rights and also the disputes relating to the damages to the property are settled by the Tribunal. Once there is an adjudication of the civil rights it is an adjudication by an authority or an institution or a Tribunal having all the trappings of the civil court. Only by the use of word 'Tribunal' it cannot be said that the Tribunal is not a ~~court~~ ^{institution for} of adjudication. The Tribunal has all the trappings of the court and for that purpose it can be equated with a court of law for all purposes.

8. In the matter of determination of the compensation, the court or the Tribunal has to decide whether it is a case of negligence, contributory negligence or composite negligence. Award of compensation can only be given when it is proved that it is a case of negligence, contributory negligence or composite negligence. So the negligence is a necessary ingredient in the matter of awarding the compensation and the quantum depends on the nature of the negligence in the cases of contributory and composite negligence. The quantum can be reduced in a case in which there is ^{no} negligence simplicitor and there is ~~no~~ plea of composite or contributory negligence. Even if for the sake of argument, the plea of the learned counsel for the applicant is accepted that the Tribunal is not a court and the decision about the negligence is incidental, even then the matter has been decided finally by the Appellate Court namely Rajasthan High Court. Rajasthan High Court is a court of record and once a decision is given by the Rajasthan High Court it is a decision of the court and the decision of the Tribunal merges in the decision of the High Court. Thus, the finding of the Rajasthan High Court cannot be challenged before this

Tribunal, particularly when the Rajasthan High Court has held that the applicant was driving the vehicle rashly and negligently resulting in accident and death of one Shri Inder Chand Mehta.

9. Let us examine the case from a different angle. Liability of the employer is on account of an act of negligence of the employee. Under ordinary common law, the person who commits the act is primarily responsible for the act. The responsibility of the respondents, Union of India is only vicarious. The person who is to suffer on account of vicarious liability has a right to get the loss compensated or to recover the amount of loss from the person who is the principal negligent person. In the instant case, the principal negligent person is the applicant who was driving the vehicle rashly and negligently. The respondents have suffered because of the doctrine of vicarious liability. The respondents can recover the amount payable as compensation from the applicant, who is the principal negligent person. A person who is negligent in the discharge of the duties resulting in the vicarious liability of the employer has to reimburse to the employer. In the instant case, the employer has proceeded to recover the amount of the loss sustained by it on account of rash and negligent driving by the applicant and for that no disciplinary proceedings are necessary.

10. We will now examine the case of Umesh A. Nair Vs. Telecom District Engineer, Kulwar, (1990 (3) SLJ CAT 539) from a different angle. It is not a case of recovery of the amount, it is a case of disciplinary proceedings. The disciplinary proceedings and recovery of the amount are different matters. In the disciplinary proceedings the

delinquent employee is to be punished. In the recovery proceedings, it is only the question of recovery of the loss sustained on account of the award which gave the findings that the applicant was driving the vehicle rashly and negligently.

11. We will also examine the matter about the rash and negligent driving from a different angle. The standard of proof required in a criminal case and a civil case stand on a different footings. In a criminal case, the doctrine of doubt is extended and the proof required is of a higher degree for the purposes of punishment. Thus, in the civil court and also in the disciplinary proceedings, the pendency of a criminal case is no ground for staying the recovery of the loss sustained by the Union of India. Even if in the criminal case, the applicant is acquitted and the benefit of doubt is extended to him, the award passed by the Tribunal remains final and the judgement of the High Court in the matter of compensation cannot be disturbed. Thus, the judgement in the criminal court will not stand in the way of recovery of the loss sustained by the Union of India.

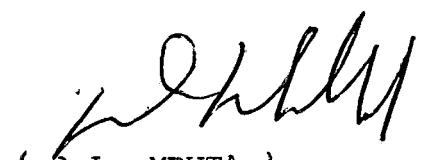
12. For the reasons mentioned above, we are of the view that the Claims Tribunal, constituted u/s 110 of the Motor Vehicles Act has all the trappings of the court and the decision of the Tribunal is final, leading to adjudication of the civil rights between the parties. The decision of the Tribunal has merged in the decision of the High Court and the decision of the High Court cannot be challenged before this Tribunal particularly in the matter of negligence and facts established and found to be proved by the High Court. The finding that the applicant was driving the vehicle rashly and negligently is a finding of the court of record and it cannot be disturbed here. Even the principle

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of res-judicata may apply and even if this principle may not be applied, even then the principle of res-judicata has to be taken into consideration for the purpose of adjudication of the rights of the parties.

13. We are of the view that there is no force in the OA and the respondents are rightly recovering the amount of loss from the applicant, which they have to pay on account of award of the Tribunal and the judgement of the Hon'ble High Court. The OA stands dismissed, with no order as to costs.

(O.P. SHARMA)
MEMBER (A)


(D.L. MEHTA)
VICE CHAIRMAN